

FILED

JAN 26 2017

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY DONALD FIALDINI,

Defendant.

CASE NO. 2:16-cr-00202 MCE

PLEA AGREEMENT

1. The Information in this case charges defendant Fialdini in a single count with violating 18 U.S.C. § 2250(a) for failure to register in California as required by the Sex Offender Registration and Notification Act. This document contains the complete plea agreement between the United States Attorney's Office for the Eastern District of California (the "government") and the defendant regarding this case. This plea agreement is limited to the United States Attorney's Office for the Eastern District of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

2. The Court is not a party to this plea agreement. Sentencing is a matter solely within the discretion of the Court, and the Court may take into consideration any and all facts and circumstances concerning the criminal activities of the defendant, including activities which may not have been charged in the Information. The Court is under no obligation to accept any recommendations made by

1 the government, and the Court may in its discretion impose any sentence it deems appropriate up to and
2 including any statutory maximum stated in this plea agreement.

3 3. If the Court should impose any sentence up to the maximum established by statute, the
4 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
5 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
6 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
7 receive.

8 4. The defendant will plead guilty fully as charged in the single count for violating 18 U.S.C. §
9 2250(a) for his failure to register in California as required by the Sex Offender Registration and
10 Notification Act. The defendant agrees that he is in fact guilty of this charge and that the facts set forth
11 in the Factual Basis for Plea attached hereto as Exhibit A are accurate. If required by any subpoena in
12 any trial or court proceeding, then the defendant would truthfully testify to such facts contained in
13 Exhibit A. The defendant agrees that this plea agreement will be filed with the Court and become a part
14 of the record of the case. The defendant understands and agrees that he will not be allowed to withdraw
15 his plea should the Court not follow sentencing recommendations or stipulations, if any, contained
16 herein. The defendant agrees that the statements made by him in signing this Agreement, including the
17 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
18 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
19 guilty plea pursuant to this Agreement and proceeds to trial. The defendant waives rights to further
20 discovery, if any, and waives any rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410, to the extent
21 that these rules are inconsistent with this paragraph or with this plea agreement generally. The
22 defendant acknowledges that he shall remain remanded into federal custody after the entry of his plea.

23 5. The defendant agrees that his conduct is governed by the Mandatory Restitution Act pursuant
24 to 18 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims affected
25 by his offense, including, but not limited to, the victims covered in the factual basis and other victims as
26 a result of the defendant's conduct for all offenses charged and relevant conduct. The defendant
27 understands that the factual basis of this plea agreement binds only the United States Attorney's Office
28 for the Eastern District of California in this criminal case, and does not bind any agency of the United

1 States in any other judicial, administrative, or other proceeding. The defendant further agrees that he
2 will not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy
3 proceeding.

4 6. The defendant agrees to pay any fine imposed by the district court and he shall pay a special
5 assessment of \$100 per count at the time of sentencing by delivering a check or money order (payable to
6 the United States District Court) to the United States Probation Office immediately before the
7 sentencing hearing. If the defendant is unable to pay the special assessment at the time of sentencing, he
8 agrees to earn the money to pay the assessment, if necessary by participating in the Inmate Financial
9 Responsibility Program.

10 7. If the defendant violates this plea agreement in any way, withdraws his plea, or tries to
11 withdraw his plea, this plea agreement is voidable at the option of the government. The government will
12 no longer be bound by its representations to the defendant concerning the limits on criminal prosecution
13 and sentencing as set forth herein. One way a defendant violates the plea agreement is to commit any
14 crime or provide any statement or testimony which proves to be knowingly false, misleading, or
15 materially incomplete. Any "post-plea" conduct by a defendant constituting obstruction of justice,
16 including lying to the US Probation Office, will also be a violation of the agreement. The determination
17 whether the defendant has violated the plea agreement will be under a probable cause standard.

18 8. If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea,
19 the government shall have the right (1) to prosecute the defendant on any of the counts to which he
20 pleaded guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3)
21 to file any new charges that would otherwise be barred by this plea agreement. The defendant shall
22 thereafter be subject to prosecution for any federal criminal violation of which the government has
23 knowledge, including perjury, false statements, and obstruction of justice. The decision to pursue any or
24 all of these options is solely in the discretion of the United States Attorney's Office.

25 9. By signing this plea agreement, the defendant agrees to waive any objections, motions, and
26 defenses that the defendant might have to the government's decision. Any prosecutions that are not
27 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
28 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of

1 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
2 The defendant agrees not to raise any objections based on the passage of time with respect to such
3 counts / charges including, but not limited to, any statutes of limitation or any objections based on the
4 Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts / charges that were
5 not time-barred as of the date of this plea agreement.

6 10. In addition, (1) all statements made by the defendant to the government or other designated
7 law enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
8 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
9 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
10 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
11 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
12 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
13 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

14 11. The defendant agrees to forfeit to the United States voluntarily and immediately all of his
15 right, title, and interest to any and all seized items. The defendant agrees to fully assist the government
16 in the forfeiture of the seized items and to take whatever steps are necessary to pass clear title to the
17 United States. The defendant agrees not to file a claim to any of the seized and or forfeited property in
18 any civil proceeding, administrative or judicial, which may be initiated. The defendant agrees to waive
19 his right to notice of any forfeiture proceeding involving this property, and agrees to not file a claim or
20 assist others in filing a claim in that forfeiture proceeding.

21 12. The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
22 seized assets and items. The defendant knowingly and voluntarily waives all constitutional, legal and
23 equitable defenses to the forfeiture of these assets in any proceeding. The defendant agrees to waive any
24 jeopardy defense, and agrees to waive any claim or defense under the Eighth Amendment to the United
25 States Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United
26 States, the State of California or its subdivisions.

27 13. The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
28 defenses or defects that may pertain to the forfeiture.

14. The defendant agrees to make a full and complete disclosure of his assets and financial condition, and will complete the United States Attorney's Office's "Authorization to Release Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change of plea. The defendant also agrees to have the Court enter an order to that effect. The defendant understands that this plea agreement is voidable at the option of the government if the defendant fails to complete truthfully and provide the described documentation to the United States Attorney's office within the allotted time.

15. If Fialdini fully complies with this plea agreement, then the government agrees not to further charge Fialdini for false statement to a federal officer except if this agreement is voided. The government will recommend a two-level reduction (if the offense level is less than 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the preparation of the pre-sentence report or during the sentencing proceeding. If ~~(1)~~ the defendant fully complies with this plea agreement and fully accepts responsibility for his criminal conduct, and ~~(2) the US Probation Office in its final presentence report recommends a low end sentence,~~ then the government agrees to recommend the low end of the applicable guideline range as found by the presentence report in its final report. The parties reserve all other rights under the sentencing guidelines and 18 USC 3553 factors.

16. The government is free to provide full and accurate information to the Court and Probation, including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement bars the government from defending on appeal or collateral review any sentence that the Court may impose.

17. As to the single count contained in the Information (**Failure to Register as a Sex Offender**), the defendant agrees that, at trial, the United States would be required to prove beyond a reasonable doubt during the time charged the following.

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- 1) The defendant is a person required to register under SORNA;
- 2) The defendant traveled in interstate or foreign commerce and failed to register and update his registration as a sex offender as defined under SORNA; and
- 3) the defendant knowingly failed to register or update a registration.

By his signature hereto, the defendant declares that he fully understands the nature and elements of the crime charged in the Information to which he is pleading guilty, together with the possible defenses thereto, and he has discussed the felony offenses with his attorney. The defendant also understands: (a) the maximum penalties for his felony violation is as follows:

OFFENSE	MAXIMUM PENALTY DESCRIPTION
18 USC 2250(a)	10 years imprisonment; 5 years TSR; \$250,000 fine; restitution to any victim

(b) if the term of supervised release (TSR) for his convictions is revoked, a ~~1~~³ year additional period of consecutive incarceration may be imposed; and (c) a mandatory \$100 penalty assessment for his felony conviction will be imposed in addition to any penalty imposed by the Court. The defendant understands and agrees that any combination or all penalties/components of his sentence may be run additionally and consecutively by the Court, including, for example, that the ~~3~~⁵ year term of supervised release shall follow the imposed period of incarceration and that the Court will be requested to make an order of restitution to identifiable victims.

18. By signing this plea agreement, the defendant also agrees that the Court can order the payment of restitution, joint and several with co-defendants, for the full loss caused by the defendants' wrongful conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged in the specific count(s) to which he is pleading guilty. The defendant further agrees, as noted above, that he will not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by the Court.

19. The defendant understands that the Court must consult the Federal Sentencing Guidelines and must take them into account when determining a final sentence. The defendant understands that the Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the Sentencing Guidelines and must take them into account when determining a final sentence. The defendant further understands that the Court will consider whether there is a basis for departure from the guideline sentencing range (either above or below the guideline sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into

1 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
2 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
3 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a). Except as
4 stipulated herein, the parties reserve all rights regarding application of the Sentencing Guidelines and
5 sentencing factors under 18 U.S.C. § 3553.

6 20. The defendant understands that by pleading guilty he is waiving the following
7 constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by
8 a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena
9 witnesses to testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to
10 be compelled to incriminate himself.

11 21. The defendant understands that the law gives the defendant a right to appeal his guilty plea,
12 conviction, and sentence. The defendant agrees as part of his plea(s), however, to give up the right to
13 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
14 exceed the statutory maximums for the offenses to which he is pleading guilty. The defendant
15 specifically gives up the right to appeal any order of restitution the Court may impose. Notwithstanding
16 the defendant's waiver of appeal, the defendant will retain the right to appeal if one of the following
17 circumstances occurs: (1) the sentence imposed by the District Court exceeds the statutory maximum;
18 and/or (2) the government appeals the sentence in the case. The defendant understands that these
19 circumstances occur infrequently and that in almost all cases this Agreement constitutes a complete
20 waiver of all appellate rights. In addition, regardless of the sentence the defendant receives, the
21 defendant also gives up any right to bring a collateral attack, including a motion under 28 U.S.C. § 2255
22 or § 2241, challenging any aspect of the guilty plea, conviction, or sentence, except for non-waivable
23 claims. The government will move to dismiss counts against the defendant at the conclusion of the
24 sentencing hearing. However, if the defendant ever attempts to vacate his plea(s), dismiss the
25 underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading
26 guilty, the government shall have the rights to charge the defendant with any dismissed counts.

27 22. The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L.
28 105-119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the

1 investigation and prosecution of all charges in the above-captioned matter and of any related allegations,
2 including without limitation any charges to be dismissed pursuant to this plea agreement and any
3 charges previously dismissed.

4 23. The defendant understands that, before entering guilty plea(s) pursuant to this plea
5 agreement, he could request DNA testing of evidence in this case. The defendant further understands
6 that, with respect to the offense(s) to which he is pleading guilty pursuant to this plea agreement, he
7 would have the right to request DNA testing of evidence after conviction under the conditions specified
8 in 18 U.S.C. § 3600. Knowing and understanding his right to request DNA testing, the defendant
9 knowingly and voluntarily gives up that right to test all items of evidence there may be in this case that
10 might be amenable to DNA testing. The defendant understands and acknowledges that by giving up this
11 right, he is giving up any ability to request DNA testing of evidence in this case in the current
12 proceeding, in any proceeding after conviction under 18 U.S.C. § 3600, and in any other proceeding of
13 any type. The defendant further understands and acknowledges that by giving up this right, he will
14 never have another opportunity to have the evidence in this case, whether or not listed above, submitted
15 for DNA testing, or to employ the results of DNA testing to support a claim that defendant is innocent of
16 the offenses to which he is pleading guilty.

17 24. The defendant recognizes that pleading guilty may have consequences with respect to his
18 immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes
19 are removable offenses, including offense(s) to which the defendant is pleading guilty. Removal and
20 other immigration consequences are the subject of a separate proceeding, however, and defendant
21 understands that no one, including his attorney or the district court, can predict to a certainty the effect
22 of his conviction on his immigration status. The defendant nevertheless affirms that he wants to plead
23 guilty regardless of any immigration consequences that his plea may entail, even if the consequence is
24 his automatic removal from the United States.

25 25. Other than this plea agreement, no agreement, understanding, promise, or condition between
26 the government and the defendant exists, nor will such agreement, understanding, promise, or condition
27 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
28 counsel for the United States.

~~exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
counsel for the United States.~~

26. The defendant further agrees that he has been advised by his attorney of all his rights under the Federal Rules of Criminal Procedure, including FRCP 11 and 32, and all his rights under the U.S. Constitution. The defendant agrees that he fully understands those rights and that he is satisfied with his attorney's representation.

27. I, Timothy Donald Fialdini, have consulted with my attorney at great length, and I fully understand all my rights, including those rights contained in FRCP 11 and my constitutional rights, with respect to the offenses charged in the Information against me. I have read this plea agreement, including its incorporated Exhibit A, and I have carefully reviewed every part of it with my attorney. In signing this plea agreement, I was not under the influence of any disabling or mentally impairing drug, medication, liquor, intoxicant or depressant. Further, I was alert, attentive and fully capable of understanding the terms and conditions of this plea agreement. I understand the charges against me and the charge (by single count Information) to which I am pleading guilty. I agree that I be sentenced to a term of incarceration under the Sentencing Guidelines and 18 USC 3553 for my criminal conduct and to pay full restitution for all of my criminal conduct. I am fully satisfied with my attorney's representation. I understand this plea agreement, and I voluntarily agree to this written plea agreement. I understand that no other terms or oral agreements exist, other than what appears in this plea agreement.


Dated: 1-26-17

Timothy D Fialdini
Timothy Donald Fialdini
Defendant

28. I, Hannah Labaree, am defendant Fialdini's attorney. I have fully explained to Mr. Fialdini the terms of this plea agreement and his rights with respect to all the charges against him and all potential charges against him. Mr. Fialdini wishes to plead guilty to the charges set forth in the single count Information. To my knowledge, Mr. Fialdini's decision to enter into this plea agreement is an informed and voluntary decision. Mr. Fialdini understands and agrees that he is guilty as charged in the single count information. In signing this plea agreement, Mr. Fialdini did not appear to be under the influence of any disabling or mentally impairing drug, medication, liquor, intoxicant or depressant. Further, from what I could discern based on my extensive discussion and "question and answer"

1 experiences with Mr. Fialdini regarding the Information, the statutory charges and other potential
2 charges, and the plea agreement, I have reason to believe that, considering the mental state under which
3 he signed this plea agreement, Mr. Fialdini was alert, attentive and fully capable of understanding the
4 terms and conditions of this plea agreement.

5 Dated: 1/26/2017


Hannah Labaree, Esq
Attorney For Defendant

7 29. The undersigned Assistant United States Attorney hereby accepts and agrees to
8 this plea agreement for the United States.

9 Phil A Talbert
Acting US Attorney

10 Dated: 1/26/17

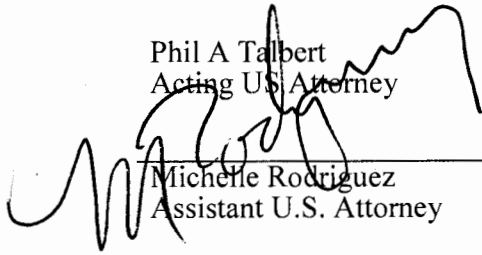

Michelle Rodriguez
Assistant U.S. Attorney

EXHIBIT A (Factual Basis For Pleas)

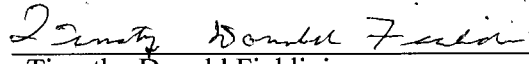
30. The defendant, with the advice and assistance of his defense counsel, acknowledges and agrees that the following factual summary accurately describes the events underlying his criminal conduct and offenses of conviction.

- 1) Fialdini is required by the state of Nevada to register as a sex offender at least due to the following convictions: 01/06/95, misdemeanor conviction for Open and Gross Lewdness in violation of Nevada Statute NRS 201.210, and 08/10/09, another misdemeanor conviction for Open and Gross Lewdness in violation of Nevada Statute NRS 201.210. On 11/02/05, Fialdini was sentenced for felony failure to register as a sex offender in the state of Nevada under NRS 179D.470 and NRS 179D.550(2).
- 2) Fialdini, under the 08/10/09 misdemeanor conviction for Open and Gross Lewdness in violation of Nevada Statute NRS 201.210, was required to register in California as a sex offender under Sex Offender Registration and Notification Act (SORNA), including because in committing this crime he engaged in a "sexual act or sexual conduct". Specifically, Fialdini did engage in a non-consensual sexual encounter (sexual battery upon a female victim) and intentional sex act in public (putting his hand on the breast of the female victim and demanding she show him her breasts and threatening to engage in nonconsensual intercourse).
- 3) In April 2013, Fialdini reported to the Sacramento County Sheriff's Department that he was residing in Sacramento County (from state of Nevada). On 4/29/13, Fialdini completed a California State Form 8047 (Notice of Sex Offender Registration Requirement) and Form 8102 (Sex Registration / Change of Address) indicating with his initials that he understands he has a "lifetime requirement" to timely (within 5 days of address change) "register as a sex offender in California". Fialdini completed the forms certifying by signature and thumbprint the information was correct and was submitted under penalty of violating criminal law. On 6/4/13, Fialdini reported to the Sacramento County Sheriff's Department that he was changing his address and leaving Sacramento County to return to the state of Nevada. Specifically, Fialdini again completed a California State Form 8102 (Sex Registration / Change of Address) indicating with his initials that he understands he has a "lifetime requirement" to timely (within 5 days of address change) "register as a sex offender in California". Fialdini completed the form certifying by signature and thumbprint the information was correct and was submitted under penalty of violating criminal law.
- 4) In August 2015, Fialdini again moved his residence to Sacramento County from the state of Nevada. Fialdini resided with Theresa L. on College Oak Drive in Sacramento. Fialdini did not register in California. Fialdini was employed in California. Fialdini intended to hide his sex offender status and intentionally elected not to register.
- 5) On 11/30/15, Fialdini committed indecent exposure in Sacramento County in violation of CPC 314(1). Fialdini exposed himself to victim J.A who responded to Fialdini's request for home assistance service at Fialdini's Sacramento residence. At that time, at Fialdini's College Oak Drive residence, Fialdini exposed himself and masturbated to Victim J.A. Victim J.A. later identified Fialdini via photo lineup. On 3/8/16, Fialdini was arrested in a Sacramento County park.
- 6) Theresa L. is a longtime associate of Fialdini. She helped Fialdini move his residence from Nevada to Sacramento, California in August 2015. Since about August 2015 through 2/5/16 Fialdini was her roommate. Theresa L and Fialdini were living together at the College Oak Drive residence in Sacramento. Fialdini moved out on or about 2/5/16.

7) On 03/08/16, when arrested and after waiver of rights, Fialdini agreed to interview. Fialdini confessed that he had been living in California for a few months and that he intentionally did not register as a sex offender. Fialdini admitted knowing Theresa and he admitted living with her. Fialdini admitted making contact with a female for home massage service at his College Oak Drive residence in November 2015. Fialdini claimed that after leaving the College Oak Drive residence he moved to another Sacramento residence on Coffee Lane. As with the College Oak Drive residence, Fialdini similarly elected not to register his Sacramento residence at Coffee Lane.

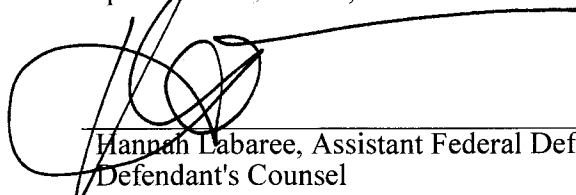
31. I, Timothy Donald Fialdini, have fully and carefully read Exhibit A, the above Factual Basis for Plea, and I agree that it is entirely true and accurate.

Dated: 1-26-17


Timothy Donald Fialdini
Defendant

32. I, Hannah Labaree, have read Exhibit A, the above Factual Basis for Plea, and agree that it is consistent with the discovery, evidence provided for review, and other materials related to this case.

Dated: ~~1-18-2017~~
1/26/2017


Hannah Labaree, Assistant Federal Defender
Defendant's Counsel